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“RESIDENT VOTER”—TERM INCLUDES ALL INDIVIDUALS WHO POSSESS ALL OF LEGAL QUALIFICATIONS, INCLUDING REGISTRATION IN LOCATIONS WHERE REGISTRATION REQUIRED BY LAW—THESE QUALIFICATIONS WOULD ENTITLE THEM TO VOTE AT ELECTION ON DATE ON WHICH THEY SIGNED “WRITTEN REQUEST” FOR WHICH PROVISION IS MADE IN SECTION 709.35 RC.

## SYLLABUS:

The term “resident voter” as used in Section 709.35, Revised Code, includes all individuals who possess all of the legal qualifications, including registration in locations where registration is required by law, which would entitle them to vote at an election on the date on which they have signed the “written request” for which provision is made in such section.

Columbus, Ohio, December 21, 1954

Hon. Mathias H. Heck, Prosecuting Attorney  
Montgomery County, Dayton, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Section 709.35 of the Revised Code of Ohio pertains to the annexation of territory. In this section, there is found the phrase, ‘resident voter.’ The Board of County Commissioners of Montgomery County directed to this office a request for an

opinion as to the meaning of that phrase. This office did, accordingly prepare a definition and forward the same to the Board, a copy of which is attached to this letter.

“In view of the importance of the question, your office is requested to give an opinion as to the meaning of that phrase, as used in Section 709.35 of the Revised Code.”

Section 709.35, Revised Code, to which you have referred reads as follows :

“When a city and a village adjoin each other, and the inhabitants of territory constituting any part of such village desire to be annexed to such adjoining city, on application of the legislative authority of the city and on written request of a majority of the voters of the territory of such village sought to be annexed, or, on the written request of two thirds of the resident voters of any part of the territory of such village sought to be annexed, the board of county commissioners may cause such alteration to be made, and the boundaries of the city and the village, respectively, to be established in accordance with the application and request, and such territory thereafter shall constitute part of the city. In all such proceedings, the board shall be governed by sections 709.02 to 709.21, inclusive, of the Revised Code.”

Although the section was amended by the 100th General Assembly, Senate Bill No. 361, it appears that the term “resident voters” was employed in this section for the first time in the recodification of 1953 enacted in House Bill No. 1, 100th General Assembly. Prior thereto, in Section 3575, General Code, the analogous term employed was “legal voters inhabiting \* \* \* the territory” concerned. Accordingly, since there is a presumption against substantive changes in the enactment of the Revised Code, it would seem that we are here concerned with a definition of the latter term.

At the outset it may be noted that the term “voter” is defined in Section 3501.01, Revised Code, as “an elector who votes at an election.” This definition is designed, however, to apply only to instances of use “in the sections of the Revised Code relating to elections.” See Section 3501.01 supra. This alone would be sufficient to indicate that such definition is inapplicable in the case at hand for there is no provision in Section 709.35, Revised Code, which in any way relates to elections. Moreover, it would be wholly impossible, by reason of the terms of the definition itself, to apply it to any proceeding in which an election were not involved. Such definition may, therefore, be disregarded in the case at hand.

In numerous cases briefly digested in 44 Words and Phrases 459 et seq., it is held that the word "voter" has two meanings, i.e., persons who perform the act of voting, and those who have the qualifications entitling them to vote. See *Commonwealth v. Baker*, 237 Ky. 380; *In re Denny*, 156 Indiana 104; *State v. Williams*, 100 Fla., 996; *State v. Blaisdell*, 18 N. D. 31.

Because in the instant case we are concerned with a statute wholly unrelated to elections or to the act of voting it is entirely logical to conclude that this term refers therein to persons having the qualifications entitling them to vote.

As indicated above the term with which we are actually concerned is "legal voters." This term too, it seems, is susceptible of the two varying meanings above pointed out. It seems, however, that to the extent that a generalization may be made the courts in cases involving election laws adopt the view that a voter is one who actually votes, and in those cases not involving elections the view is preferred that a voter is one who is entitled to vote. One interesting decision in which the "qualification" rule was applied is that in *State v. Village of McKinley*, 132 Minn. 48, where the court was concerned with the validity of a petition by the "legal voters" of a particular territory who were seeking annexation of such territory to a village, a case very closely parallel to that which you have described. In that case the court held to be "legal voters" all "resident citizens who would have been entitled to vote \* \* \* on the date they signed the petition."

This definition appears to me to indicate the true legislative intent in the case here under consideration, especially in view of the virtual impossibility of applying a definition which includes the test of actually voting in proceedings in which no voting is involved.

In determining whether a particular individual is a voter in the instant case under this rule it would obviously be necessary to inquire as to his registration status since this is a legal requirement in your county and an individual not properly registered at the time of signing the "written request" involved in proceedings under Section 709.35, *supra*, would not be entitled to vote on such date.

Accordingly, in specific answer to your inquiry, it is my opinion that the term "resident voter" as used in Section 709.35, Revised Code, includes all individuals who possess all of the legal qualifications, includ-

ing registration in locations where registration is required by law, which would entitle them to vote at an election on the date on which they have signed the "written request" for which provision is made in such section.

Respectfully,

C. WILLIAM O'NEILL

Attorney General